

Example (1). A, B, and C are foundation managers of X, a private foundation. Assume that A, B, and C are liable for both initial and additional taxes under sections 4944(a)(2) and 4944(b)(2), respectively, for the following investments by X: an investment of \$5,000 in the common stock of corporation M, and an investment of \$10,000 in the common stock of corporation N. A, B, and C will be jointly and severally liable for the following initial taxes under section 4944(a)(2): a tax of \$250 (i.e., 5 percent of \$5,000) for each year (or part thereof) in the taxable period (as defined in section 4944(e)(1)) for the investment in M, and a tax of \$500 (i.e., 5 percent of \$10,000) for each year (or part thereof) in the taxable period for the investment in N. Further, A, B, and C will be jointly and severally liable for the following additional taxes under section 4944(b)(2): a tax of \$250 (i.e., 5 percent of \$5,000) for the investment in M, and a tax of \$500 (i.e., 5 percent of \$10,000) for the investment in N.

Example (2). Assume the facts as stated in Example (1), except that X has invested \$500,000 in the common stock of M, and \$1 million in the common stock of N. A, B, and C will be jointly and severally liable for the following initial taxes under section 4944(a)(2): a tax of \$5,000 for the investment in M, and a tax of \$5,000 for the investment in N. Further, A, B, and C will be jointly and severally liable for the following additional taxes under section 4944(b)(2): a tax of \$10,000 for the investment in M, and a tax of \$10,000 for the investment in N.

§ 53.4944-5 Definitions.

(a) *Taxable period*—(1) *In general.* For purposes of section 4944, the term “taxable period” means, with respect to any investment which jeopardizes the carrying out of a private foundation’s exempt purposes, the period beginning with the date on which the amount is invested and ending on the earliest of:

- (i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed on the making of the investment by section 4944(a)(1);
- (ii) The date on which the amount invested is removed from jeopardy; or
- (iii) The date on which the tax imposed by section 4944(a)(1) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in subparagraph (1) (i) of this paragraph is not mailed because there is a waiver of the restrictions on assessment and collection of a deficiency, or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively,

shall be treated as the end of the taxable period.

(b) *Removal from jeopardy.* An investment which jeopardizes the carrying out of a private foundation’s exempt purposes shall be considered to be removed from jeopardy when:

(1) The foundation sells or otherwise disposes of the investment, and

(2) The proceeds of such sale or other disposition are not themselves investments which jeopardize the carrying out of such foundation’s exempt purposes.

A change by a private foundation in the form or terms of a jeopardizing investment shall result in the removal of the investment from jeopardy if, after such change, the investment no longer jeopardizes the carrying out of such foundation’s exempt purposes. For purposes of section 4944, the making by a private foundation of one jeopardizing investment and a subsequent exchange by the foundation of such investment for another jeopardizing investment will be treated as only one jeopardizing investment, except as provided in § 53.4944-6 (b) and (c). For the treatment of a jeopardizing investment which is removed from jeopardy or otherwise transferred by a private foundation by the making of a grant or by bargain-sale, see sections 4941 and 4945 and the regulations thereunder. A jeopardizing investment cannot be removed from jeopardy by a transfer from a private foundation to another private foundation which is related to the transferor foundation within the meaning of section 4946(a) (1)(H) (i) or (ii), unless the investment is a program-related investment in the hands of the transferee foundation.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). X, a private foundation on the calendar year basis, makes a \$1,000 jeopardizing investment on January 1, 1970. X thereafter sells the investment for \$1,000 on January 3, 1971. The taxable period is from January 1, 1970, to January 3, 1971. X will be liable for an initial tax of \$100, that is, a tax of 5 percent of the amount of the investment for each year (or part thereof) in the taxable period.

Example (2). Assume that both C and D are investments which jeopardize exempt purposes. X, a private foundation, purchases C

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in 1971 and later exchanges C for D. Such exchange does not constitute a removal of C from jeopardy. In addition, no new taxable period will arise with respect to D, since, for purposes of section 4944, only one jeopardizing investment has been made.

Example (3). Assume the facts as stated in Example (2), except that X sells C for cash and later reinvests such cash in D. Two separate investments jeopardizing exempt purposes have resulted. Since the cash received in the interim is not of a jeopardizing nature, the amount invested in C has been removed from jeopardy and, thus, the taxable period with respect to C has been terminated. The subsequent reinvestment of such cash in D gives rise to a new taxable period with respect to D.

(d) *Cross reference.* For rules relating to taxable events that are corrected within the correction period, defined in section 4963(e), see section 4961(a) and the regulations thereunder.

[T.D. 7240, 37 FR 28747, Dec. 27, 1972, as amended by T.D. 8084, 51 FR 16303, May 2, 1986]

§ 53.4944-6 Special rules for investments made prior to January 1, 1970.

(a) Except as provided in paragraph (b) or (c) of this section, an investment made by a private foundation prior to January 1, 1970, shall not be subject to the provisions of section 4944.

(b) If the form or terms of an investment made by a private foundation prior to January 1, 1970, are changed (other than as described in paragraph (c) of this section) on or after such date, the provisions of § 53.4944-1(a)(2)(iii) shall apply with respect to such investment.

(c) In the case of an investment made by a private foundation prior to January 1, 1970, which is exchanged on or after such date for another investment, for purposes of section 4944 the foundation will be considered to have made a new investment on the date of such exchange, unless the post-1969 investment is described in § 53.4944-1(a)(2)(ii)(b). Accordingly, a determination, under § 53.4944-1(a)(2)(i), whether the investment jeopardizes the carrying out of the foundation's exempt purposes shall be made at such time.

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Subpart F—Taxes on Taxable Expenditures

SOURCE: T.D. 7215, 37 FR 23161, Oct. 31, 1972, unless otherwise noted.

§ 53.4945-1 Taxes on taxable expenditures.

(a) *Imposition of initial taxes*—(1) *Tax on private foundation.* Section 4945(a)(1) of the Code imposes an excise tax on each taxable expenditure (as defined in section 4945(d)) of a private foundation. This tax is to be paid by the private foundation and is at the rate of 10 percent of the amount of each taxable expenditure.

(2) *Tax on foundation manager*—(i) *In general.* Section 4945(a)(2) of the Code imposes, under certain circumstances, an excise tax on the agreement of any foundation manager to the making of a taxable expenditure by a private foundation. This tax is imposed only in cases in which the following circumstances are present:

(a) A tax is imposed by section 4945(a)(1);

(b) Such foundation manager knows that the expenditure to which he agrees is a taxable expenditure, and

(c) Such agreement is willful and is not due to reasonable cause.

However, the tax with respect to any particular expenditure applies only to the agreement of those foundation managers who are authorized to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the foundation and to those foundation managers who are members of a group (such as the foundation's board of directors or trustees) which is so authorized. For the definition of the term *foundation manager*, see section 4946(b) and the regulations thereunder.

(ii) *Agreement.* The agreement of any foundation manager to the making of a taxable expenditure shall consist of any manifestation of approval of the expenditure which is sufficient to constitute an exercise of the foundation manager's authority to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the foundation, whether or not such manifestation of approval is the